

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation  
Against:

PAMELA MARIE SCAIA,

Respondent.

Case No.: 2007-293

OAH No.: L2007110036

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective July 31, 2008.

IT IS SO ORDERED July 31, 2008.

BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

*LaFrancine W Tate*

rfm

**BEFORE THE  
BOARD OF REGISTERED NURSING  
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In the Matter of the First Amended  
Accusation Against:

PAMELA MARIE SCAIA,

Respondent.

Case No. 2007-293

OAH Case No. L2007110036

**PROPOSED DECISION**

This matter was heard on February 26, 2008, by Mark E. Harman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), in Los Angeles, California.

Ruth Ann Terry, M.P.H., R.N. (Complainant), was represented by Gregory J. Salute, Deputy Attorney General.

Pamela Marie Scaia, R.N. (Respondent), appeared and participated in the proceeding without legal counsel.

Oral and documentary evidence was received. The record was left open until March 14, 2008, to allow Respondent to submit additional documentary evidence, in particular, a letter from her counselor, which she believed she had previously provided to Complainant's counsel, and to allow Complainant's counsel an opportunity to file an objection thereto. Respondent sent by facsimile transmission the counselor's letter, along with Respondent's cover letter, which was received by OAH on March 4, 2008, and marked for identification as Exhibit L. No objection was filed, Exhibit L was admitted, the record was closed, and the matter was deemed submitted for decision on March 14, 2008.

On March 20, 2008, the ALJ received by facsimile transmission a copy of a letter from Respondent indicating that a Los Angeles Superior Court judge had entered an order under Penal Code section 1203.4 terminating Respondent's criminal probation, setting aside her nolo contendere plea (which led to her 2006 conviction), entering a plea of not guilty, and dismissing the criminal complaint against her (commonly known as expungement). The ALJ re-opened the record and provided Complainant's counsel an opportunity to object to Respondent's letter, which under the circumstances was deemed an ex parte communication (Gov. Code §§ 11430.40), and to allow Respondent to file a copy of the court's "expungement" order.

On April 10, 2008, Complainant filed a letter brief objecting to re-opening the record or admitting Respondent's letter or other new evidence. On the same date, Respondent filed another letter along with a copy of the court's March 14, 2008 minute order granting Respondent's motion for dismissal of the criminal proceedings. Lastly, Respondent wrote another letter, received April 21, 2008, in response to the objections raised in Complainant's counsel's letter.

Respondent's letters filed on March 20, April 10, and April 21, 2008, with the court's minute order, have been marked collectively for identification as Exhibit M. Complainant's letter brief filed on April 10, 2008, has been marked for identification as Exhibit 6. Having considered the papers of the parties, the ALJ has decided that evidence of the recent expungement of Respondent's criminal case is relevant to important issues in this matter, and outweighs the prejudice to Complainant. Therefore, the court's minute order (but not Respondent's letters) is admitted.

The record was closed, and the matter was deemed submitted for decision on April 21, 2008.

Complainant seeks revocation or suspension of Respondent's nursing license based on Respondent's felony conviction for child battery. Respondent asks that her license remain free from discipline based on an unblemished 17-year career as a competent registered nurse, on the mitigating circumstances of her crime, on her rehabilitation since her crime, and on the evidence demonstrating that she poses no risk of harm to patients or to the public.

### FACTUAL FINDINGS

1. The First Amended Accusation was made by Complainant, the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs, acting in her official capacity.
2. The Board issued registered nurse license number 342812 to Respondent on April 30, 1982. The license is due to expire on January 31, 2010, unless renewed. This license has no record of prior discipline by the Board.
3. The Board issued nurse practitioner certificate number 17845 to Respondent on October 31, 2007. The certificate is due to expire on January 31, 2010, unless renewed. This certificate has no record of prior discipline by the Board.
4. For 17 years, Respondent was a registered nurse in the coronary care unit of Daniel Freeman Hospital. While raising their two natural children, Respondent and her husband decided to care for children who had been removed from their parents by the Los Angeles County Child Welfare Department. Respondent and her husband eventually adopted four children, including a brother and sister whose mother had been an alcoholic, and another two siblings who had preexisting medical conditions, including failure to thrive and low birth weight. In November 1997, when they adopted their last child, Respondent

retired from her nursing career. Respondent chose to home school her adopted children due to their academic and behavior problems, and to help them avoid the significant stresses of public school commonly faced by children with special needs. She also cared for approximately 10 foster babies over an 8- 10-year period, including one blind baby and one "drug" baby, in addition to her natural and adopted children.

4a. On September 6, 2006, in the Superior Court of California, County of Los Angeles, in case number YA065245, Respondent was convicted, upon her plea of nolo contendere, of violating Penal Code section 273d, subdivision (a) (infliction of corporal punishment or injury upon a child), a felony.<sup>1</sup> This crime is substantially related to the qualifications, functions and duties of a registered nurse because it involves assaultive conduct. (Cal. Code Regs., tit. 16, § 1444, subd. (a).)

4b. Imposition of sentence was suspended and Respondent was placed on formal probation for three years under certain terms and conditions, including incarceration for five days, less credit for five days served, and payment of a \$20 court security assessment and a \$200 restitution fine. Respondent also was required to provide DNA samples and print impressions pursuant to Penal Code sections 296 and 296.1. The court characterized its probation order as "diversion" and authorized a reduction from a felony to a misdemeanor after one year.

4c. The facts and circumstances underlying Respondent's conviction are as follows. In June 2006, Respondent injured her teenage daughter when she pulled her daughter's hair while disciplining her, causing a small bump on her daughter's head. Respondent's use of force did not cause a serious injury. Complainant failed to establish that Respondent hit her daughter's head against the wall or that she hit her daughter with her fists. Respondent used force that was improper, but it was not cruel or inhuman punishment.<sup>2</sup>

4d. In 2007, the court reduced Respondent's felony conviction to a misdemeanor. In March 2008, the court entered an order under Penal Code section 1203.4 terminating probation, setting aside Respondent's nolo contendere plea, entering a plea of not guilty, and dismissing the criminal complaint against her.

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<sup>1</sup> Penal Code section 273d, subdivision (a), provides that: "Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine."

<sup>2</sup> Respondent was convicted of a crime requiring proof that an injury was inflicted upon a child, and the injury resulted in a traumatic condition. A "traumatic condition" is a condition of the body, such as a wound or external or internal injury, whether of a minor or a serious nature, caused by a physical force. CALJIC 9.36 CHILD BEATING (Penal Code § 273d) California Jury Instruction, Criminal, (7th ed. 2005).

5. Respondent credibly testified she did not abuse her daughter or any of her children. According to the police report, her daughter told police that Respondent had hit her ten times with her fists. Yet police officers found no scars, bruising, or other injuries on her daughter, other than the bump and a slightly swollen face (possibly from crying). Respondent's four adopted children were at home, as were four foster children under the age of three (one was a newborn).<sup>3</sup> Respondent's husband was at work and arrived home after the police were already there. After the police questioned the victim, the victim's older brother, Respondent, and Respondent's husband, they arrested Respondent because she did not want them to interview the younger children, and they interpreted her lack of cooperation as obstruction. Respondent spent five days in jail. As a result of this incident, all eight children, both foster and adopted, were removed from her home, never to return.

6. Respondent's oldest adopted son is now 18 years old and living with his older brother. He called the police on the day of the incident. He recently sent an email to his mother, stating that he and his sister had conspired against their mother to "get even with her." He wrote: "My sister ... and I didn't like to stay home and do our homework and chores." They did not realize their "bad decision" would have serious consequences. Although the substance of this letter cannot be used directly to make a finding, because it is administrative hearsay, it supports Respondent's contention that the circumstances of her crime were not as portrayed by the police report, which also is a hearsay document.

7. Respondent employed a strict disciplinary method with all of her children, which included occasional loud verbal commands and using the "spanker," a leather strap with dimensions of approximately one inch by 10 inches, on their buttocks. She said that a church-sponsored parenting class (Hope Chapel) several years ago had suggested the spanker was okay (since her crime, she has learned that it is not). Respondent never hit her children with her fists. She admitted she had grabbed her daughter's hair in the past. She denied she had pulled hair out. As a foster mother, her home was visited monthly by county social workers to ensure the safety of children in her care.

8. Respondent has a lot of energy and initiative. She home-schooled her four adopted children. She mentored other parents in the home schooling community. She provided her children many and varied opportunities to participate in artistic, athletic and cultural activities. She coached and refereed their soccer games. They went to Sunday school and sang in choirs. She led their scout troops and took them on camping trips. In 2004-2005, she took four of her children on a full-year "field trip" to China. While she taught English in China, her children attended school and directly experienced Chinese culture.

9. The tragic events leading to Respondent's conviction have had serious and dramatic consequences. Respondent pled to the criminal charge because she erroneously believed that her children would be returned to her more quickly. According to a letter from

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<sup>3</sup> At the time, Respondent's two natural children were in college (one has since graduated; the other is scheduled to graduate this spring).

foster parents who took her daughter in after the crime, her daughter has had a very difficult time since the incident. She has continued to rebel in a series of foster homes and has been hospitalized for mental problems on three occasions. Respondent's marriage of 26 years has ended. Respondent's demeanor throughout the hearing was consistent with someone who has strong feelings of remorse and sadness, as well as frustration, anger, and resentment.

10. Not only has Respondent complied with every order of both the criminal and juvenile dependency courts, she also has gone far beyond anything that has been ordered. She attended dozens of additional domestic violence support groups with her husband. She now has unmonitored visitation with the children. On her own, Respondent has attended weekly individual counseling sessions with Susan McMaster, L.M.F.T., since September 2006. In February 2008, McMaster wrote that Respondent had worked "extremely hard in counseling." McMaster said Respondent understands and accepts responsibility for her role in her problems, has learned skills to deal with stress and to seek support when needed, and has improved to the point that counseling is no longer needed. She described Respondent as a very caring, compassionate woman devoted to her family, her community, her church, and her work. McMaster wrote: "I strongly believe that her family problems will have no relevance, nor pose any risk on her ability and suitability to be a responsible, caring nurse."

11. Respondent returned to graduate school in Fall 2006. That semester, she earned credits with a 3.923 GPA to qualify for becoming a nurse practitioner. In 2007, she successfully completed the Harbor-UCLA Women's Health Care Nurse Practitioner Program, earning a 92/A grade average. She performed her internship hours at Sierra Health Center, a non-profit community clinic in Fullerton, California. Diane Allen, RNC, NP, MSN, who worked there with Respondent for nine months, wrote a letter stating that Respondent is very caring with patients, has sound nursing knowledge, is a great patient educator, and provides excellent nursing care. Allen does not believe that Respondent's family troubles have in any way reflected negatively on the ways she works with patients, co-workers or supervisors at the clinic.

12. Since June 2006, Respondent has been a volunteer teacher of Spanish and cross-cultural studies to adults at the Lighthouse Mission. Since June 2007, Respondent has volunteered teaching first grade children on weekends at the Mariner's Church in Irvine, California. Marilyn Fisher, who is K/1 Coordinator at the church, wrote a letter of recommendation attesting to Respondent's enthusiasm and passion for the work. Respondent submitted numerous other letters, mostly from parents who were in a babysitting co-op or home schooling situation. All of them praise Respondent's abilities and express trust in her.

13. Pursuant to Business and Professions Code section 125.3, subdivision (a), Complainant requested investigative and Attorney General's fees and costs of \$4,205.75 (according Mr. Salute's declaration; however the attached billing record actually states \$6,528.75) for the costs of investigation and enforcement in this case. Because Complainant has not established that any discipline should be imposed against Respondent, it is not reasonable to impose an award of costs against Respondent.

## LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's registered nurse license and practical nurse certificate pursuant to Business and Professions Code section 2761, subdivision (f), in conjunction with section 490, for conviction of a crime which is substantially related to the qualifications functions and duties of a licensed registered nurse and certificated nurse practitioner, as set forth in factual finding number 4.

2. Cause does not exist to suspend or revoke Respondent's registered nurse license pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct. This subdivision sets forth four specific instances of unprofessional conduct, including but not limited to, gross negligence or incompetence with respect to licensed activities, or a conviction for practicing medicine without a license. Complainant has not alleged a factual basis for discipline under these or any similar examples. Respondent's sole conviction is not a basis for a finding of unprofessional conduct.

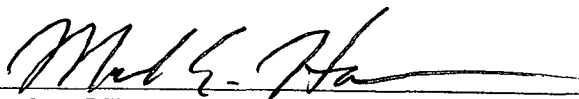
3. Complainant has failed to establish that Respondent, by virtue of her conviction, poses any risk of harm to her patients or the public. There is no record of any problems or discipline against Respondent during her 17-year career as a nurse. Respondent has demonstrated that the circumstances of her conviction are peculiar to the domestic situation, where emotions often can run high. These circumstances are not typically encountered when providing nursing services, where there is a natural separation between the professional nurse and the client. Respondent has also demonstrated her commitment to her rehabilitation, through counseling and support groups; and in particular, Respondent has rededicated herself to her nursing career, by returning to school, completing a nine-month preceptorship, and obtaining a nurse practitioner certificate. Respondent will bring a lot of experience, knowledge, energy, and passion to the performance of her nursing duties. The evidence establishes Respondent is able to comply with all professional standards of care. Simply put, the evidence of a Respondent's domestic problem does not translate into her inability to perform the duties of a nurse. This incident was tragic. It has affected Respondent personally, but it does not affect Respondent's nursing abilities. An unrestricted license will not endanger public safety. It is not necessary to put Respondent's license on probation to protect the public.

## ORDER

By virtue of legal conclusion numbers 1 through 3, the accusation against Respondent is sustained without the imposition of discipline. Complainant's request for fees and costs associated with its investigation and prosecution is denied.

HEARD: June 16, 2008

BOARD OF REGISTERED NURSING  
JUN 18 2008



MARK E. HARMAN

Administrative Law Judge

Office of Administrative Hearings

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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the First Amended Accusation  
Against:

Case No. 2007-293

**FIRST AMENDED ACCUSATION**

12 PAMELA MARIE SCAIA  
5372 Sierra Raja Road  
13 Irvine, Ca. 92603

14 Registered Nurse License No. 342812  
Nurse Practitioner Certificate No. NP 17845

16 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely  
21 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs (Board).

23 2. On or about April 30, 1982, the Board issued Registered Nurse License  
24 No. 342812 to Pamela Marie Scaia (Respondent). The Registered Nurse License was in full  
25 force and effect at all times relevant to the charges brought herein and will expire on January 31,  
26 2008, unless renewed.

27 3. On or about October 31, 2007, the Board issued Nurse Practitioner  
28 Certificate No. NP 17845 to Respondent. The Nurse Practitioner Certificate was in full force and



1 effect at all times relevant to the charges brought herein and will expire on January 31, 2008,  
2 unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board of Registered Nursing,  
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 4. Section 118, subdivision (b), of the Code provides that the  
9 suspension, expiration, surrender, cancellation of a license shall not deprive the Board of  
10 jurisdiction to proceed with a disciplinary action during the period within which the license may  
11 be renewed, restored, reissued or reinstated.

12 5. Section 2750 of the Business and Professions Code ("Code") provides, in  
13 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
14 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
15 2750) of the Nursing Practice Act.

16 6. Section 2761 of the Code states:  
17 "The board may take disciplinary action against a certified or licensed nurse or  
18 deny an application for a certificate or license for any of the following:

19 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

20 ...

21 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or  
22 abetting the violating of, or conspiring to violate any provision or term of this chapter [the  
23 Nursing Practice Act] or regulations adopted pursuant to it.

24 ...

25 "(f) Conviction of a felony or of any offense substantially related to the  
26 qualifications, functions, and duties of a registered nurse, in which event the record of the  
27 conviction shall be conclusive evidence thereof.

28 7. Section 2764 of the Code provides, in pertinent part, that the expiration of

1 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
2 against the licensee or to render a decision imposing discipline on the licensee.

3 8. California Code of Regulations, title 16, section 1444, states:

4 "A conviction or act shall be considered to be substantially related to the  
5 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
6 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
7 public health, safety, or welfare.

8 9. Section 490 of the Code states:

9 "A board may suspend or revoke a license on the ground that the licensee has been  
10 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
11 of the business or profession for which the license was issued. A conviction within the meaning  
12 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere. Any action which a board is permitted to take following the establishment of a  
14 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
15 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
16 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
17 Penal Code."

18 10. Section 125.3 of the Code provides, in pertinent part, that the Board may  
19 request the administrative law judge to direct a licentiate found to have committed a violation or  
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
21 and enforcement of the case.

#### 22 FIRST CAUSE FOR DISCIPLINE

23 (Conviction of a Substantially Related Crime)

24 11. Respondent's license and certificate are subject to disciplinary action  
25 under sections 2761, subdivision (f) and 490 of the Code, on the grounds of unprofessional  
26 conduct, as defined in California Code of Regulations, title 16, section 1444, in that Respondent  
27 was convicted of a crime which is substantially related to the qualifications, functions and duties  
28 of a licensed registered nurse, as follows:

1 a. On or about or about September 6, 2006, Respondent was convicted on a  
2 plea of nolo contendere to one count of violating Penal Code section 263d(a); a felony, (corporal  
3 punishment or injury on a child) in the Superior Court of the State of California, County of Los  
4 Angeles, Southwest District, Case No. YA065245, entitled *The People of the State of California*  
5 *v. Pamela Marie Scaia*.

6 b. The circumstances surrounding the conviction are that on or about  
7 June 14, 2006, Respondent grabbed her minor daughter M.S.<sup>1</sup> by the hair and hit her head against  
8 a wall. Respondent also hit M.S. with closed fists.

9 SECOND CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct)

11 12. Respondent's certificate and license are subject to disciplinary action  
12 under Section 2761, subdivision (a), in that Respondent committed acts of unprofessional  
13 conduct as more fully set forth in paragraph 11, subparagraphs (a) and (b). Complainant refers  
14 to, and by this reference incorporates the allegations in paragraph 11 subparagraphs (a) and (b),  
15 inclusive as though set forth fully.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
18 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License No. 342812, issued to  
20 Pamela Marie Scaia;

21 2. Revoking or suspending Nurse Practitioner Certificate No. NP17845,  
22 issued to Pamela Marie Scaia;

23 3. Ordering Pamela Marie Scaia to pay the Board of Registered Nursing the  
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
25 Professions Code section 125.3;

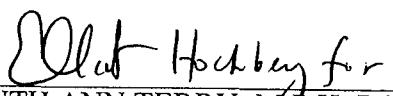
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27  
28 1. The child's name is identified by initials so as to protect her identity.

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4. Taking such other and further action as deemed necessary and proper.

DATED: 12/5/07

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
State of California  
Complainant

LA2007600387  
First Amended Acc.wpd